IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 91/2005

M/s. Gabriel S. Rodrigues.
(deceased) through his legal heirs. ..... Petitioners.

V/s.

Mr. M. Viegas and another. ..... Respondents.

Mr. S. S. Kantak, Advocate for the petitioners.

CORAM : R.M. LODHA, J.

DATE : 19TH OCTOBER, 2005

P.C.

Heard Mr. S. S. Kantak, the learned Advocate for the petitioners.

2. I perused the Order dated 6.10.2004 passed by the State Consumer Dispute Redressal Commission and also the Order dated 25.2.2000 passed by the District Consumer Dispute Redressal Forum.

3. The present respondents filed the complaint in the District Consumer Dispute Redressal Forum against Gabriel Rodrigues (since deceased and now represented by his legal representatives) in respect of the contract of building renovation and

extension of their house at Verdo, Cuncolim, Salcete, Goa given by the complainants to him. For the sake of convenience I shall refer to the parties as referred before the District Forum.

4. The contention of the opposite party that the complainant was not `Consumer' within the meaning of the Consumer Protection Act since they had hired the services of the opposite party for consideration was rejected by the District Forum. Holding to that effect, the District Forum passed the order thus :

> " In the result we hereby direct the Opposite party to remove the tiles used on the garage workroom floor and veranda, at back of the garage at his cost and to lay white mosaic tiles of the complainant's choice since he has charged them for that.
>
> The Opposite Party shall refix the widow grills of the ventilators correctly at his cost. Similarly the Opposite Party shall replace the shutter of the garage with shutters with automatic system or lifting mechanism without charging him extra in that regard and by is at liberty to take back the old shutters. The Opposite Party shall also attend to the electrical problems faced by the complainant in his house and also to provide him with the diagram of the electrical connections. The Opposite Party shall also rectify the defect in the door between the workroom and the garage without

charging the complainant in that regard.

The complainant has produced on record a bill of Rs.12,000/-, 6100/- and we have no reasons to disbelieve his claim that he spent that amount in rectifying the defects in the works carried out by the Opposite party consequently we hereby order the Opposite Party to pay to the complainant the said sum of Rs.18,100/- and cost of the bathroom tiles of 1500/- along with payment of cost of Rs.1000/- and a notional compensation of Rs.3000/- within 30 days from the date of receipt of this order."

5. Aggrieved thereby the opposite party preferred an appeal before the State Consumer Redressal Dispute Commission. The appellant died during the penency of the appeal and his legal heirs were brought on record. The State Commission, after hearing the parties, partly allowed the appeal by giving direction of necessary repairs in respect of the shutters instead of replacement. The other directions given by the District Forum were maintained. The order regarding the compensation for deficiency in service granted by the District Forum was also maintained by the State Commission.

6. The learned Advocate appearing for the petitioners raised twofold submission: (1) that the opposite party died during the penency of the appeal; right to sue after his death did not survive upon

his legal heirs in respect of the directions given by the District Forum for the works to be done by the Opposite Party and (2) that there was no evidence in so far as award of compensation was concerned.

7. None of the contentions has any merit.

8. The District Forum passed the order against the opposite party and directed him to do various works and also ordered payment of compensation for deficiency in service by him. It was the Opposite Party who went in appeal against the Order of the District Forum. If the right to sue did not survive in respect of the various directions given by the District Forum as contended by the learned Advocate for the petitioners, then the legal heirs could not have been brought on record and the appeal was liable to be dismissed as abated. But the fact of the matter is that the legal heirs of the deceased Opposite Party made the application for their impleadment and substitution and they were impleaded and brought on record in place of the Opposite Party. Nothing was shown by the learned Advocate for the Petitioners that the application for substitution was confined only to the extent of order of compensation. In the written arguments, therefore, the contention raised by the appellants before the State Commission that right to sue did not survive was wholly misconceived. In any case, it does not help the case of the appellants in as much as if the right to sue did not survive, the appeal would have

been dismissed as abated. The first contention of the learned Advocate for the Petitioners is, therefore, overruled.

9. As regards the second contention, I find that there was material before the District Forum based on which the District Forum awarded compensation. The State Commission has not interfered in this regard. No case for invocation of extraordinary jurisdiction is made out.

10. Writ petition is dismissed in limine.

R.M. LODHA, J.

Ssm.